ATTACHMENT

INSTRUCTION NO. 12A Unfair or Deceptive Act

In order to prove that defendants engaged in an unfair or deceptive act or practice, it is sufficient to show that the act or practice had the capacity to deceive a substantial portion of the public. Plaintiffs do not need to show that the act or practice was intended to deceive. You may presume that Defendants engaged in an unfair or deceptive act or practice if you find that defendants adopted their marks knowing them to be similar to plaintiffs' marks.

INSTRUCTION NO. 12C Public Interest

I instruct you that defendants' infringing conduct affected the public interest and that this element is satisfied.

INSTRUCTION NO. 13 Damages

I. First Claim - Trademark Infringement

B. Defendants' Profits
In addition to actual damages, plaintiffs are entitled to any profits of defendants that are attributable to the infringement. You may not include in an award of profits any amount that you took into account in determining actual damages.

C. Determining Defendants' Profits

Either as a recovery of actual damages or as a separate recovery, you shall determine Defendant's profits from the infringing activities as follows:

Plaintiffs have the burden of proving defendants' gross revenue. Gross revenue is all of defendants' receipts from sales of infringing products. Any doubts about the actual amount of gross sales are to be resolved against defendants.

Defendants' profits are determined after deducting defendants' deductible expenses from their gross revenue. Deductible expenses are all the overhead and production expenses actually incurred in generating defendants' gross revenue from the sales of infringing products. Defendants have the burden of proving their deductible expenses. If defendants fail to meet their burden of providing deductible expenses, or if Defendants' evidence is incomplete and contradictory, then expenses should not form a part of the calculation of profits. Not all expenses are deductible. In determining the defendants' profits, you should not deduct expenses relating to attorneys' fees, realized annual losses, salaries (unless you determine that the salaries are reasonable), and taxes. You should calculate profits on a year-to-year basis. One year's profits (or losses) shall not be calculated for or against another year's profits (or losses).

Unless you find that a portion of defendants' profits are attributable to factors other than use of plaintiffs' trademark or trademarks, all the profits are to be attributed to the infringement. <u>The burden is on defendants to demonstrate</u> the portion of their profits, if any, demonstrably not attributable to infringement.

INSTRUCTION NO. 14
Damages - Mitigation

DELETED IN ITS ENTIRETY - REMAINDER OF THE INSTRUCTIONS RENUMBERED ACCORDINGLY

ATTACHMENT